IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.8469 OF 2006

Lilabai Ambadas Palange .... Petitioner
Vs.
Husain Ahmad Atar & Anr. .... Respondents

Shri R.G. Ketkar for the Petitioner.

Shri S.D. Thokade for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 22, 2006

P.C:

1. Heard. The petitioner challenges the concurrent findings arrived at on the basis of the evidence led by the parties in support of the ground for eviction of the petitioner on account of default in payment of rent as well as bona fide need of the premises for occupation by the respondents/landlords. The learned Advocate for the petitioner has submitted that the finding arrived at by the lower Appellate Court to the effect that the plaintiffs' family consist of 40 members is de hors the pleadings in as much as the case pleaded was to the effect that the landlords have 8 sons and their family needs the premises for their occupation. Indeed, the pleadings do not disclose any claim of the family members of the landlords to consist of 40 members. However, at the same time, the lower Appellate Court had

arrived at the clear finding that the evidence led in support of the case of the landlords establish that one of the sons of the landlords has to reside out of the family house on account of shortage of sufficient accommodation for him. In addition thereto, both the Courts below have arrived at concurrent finding on the issue of default in payment of rent. Only defence which was sought to be raised in relation to default in payment of rent was that there was an agreement between the landlords and the tenant to the effect that the tenant was permitted to carry out certain repairs and renovation and the expenses thereof was to be adjusted towards the liability regarding the rent payment. Admittedly, no such agreement was disclosed in writing and nothing has been brought on record in that regard by the petitioner nor the same has been established. Being so, no fault can be found with the concurrent findings arrived at by the Courts below, either in relation to the default in payment of rent as also in relation to the bona fide need of the premises for occupation of the landlords' family. The impugned orders do not disclose any jurisdictional error so as to warrant interference in exercise of jurisdiction under Article 227 of the Constitution of India. Hence the petition fails and is dismissed.

2. At this stage, the learned Advocate for the

petitioner prays for extension of period for vacating the suit premises which is objected to by the Advocate for the respondents. However, I am inclined to extend the period for vacating the premises to 30-4-2007. Accordingly, the impugned order of eviction shall not be executed till 30-4-2007, subject to the petitioner and all her family members, major in age, filing undertaking in this Court within four weeks to the effect that they will not create any third party interest nor shall induct third person in the suit premises and will deliver the peaceful vacant possession thereof to the respondents on or before 30-4-2007.

(R.M.S. Khandeparkar, J.)

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